IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SIXTEENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE M.H.S. ANSARI

and
THE HON'BLE MR JUSTICE T.CH.SURYA RAO

WRIT PETITION NO : 20781 of 2002

Between:

M/s.Raasi Cement Limited, A Public Limited Company incorporated under the provisions of Companies Act, 1956, having its registered office at V Floor, Minerva House, Secunderabad, rep.by its Authorised Representative Mr.M.S.Trivikrama Rao.

..... PETITIONER

AND

1. The Commissioner of Income Tax (Central), Hyderabad.
2. Deputy Commissioner of Income Tax , Central Circle I, Basheer Bagh, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue appropriate writ/order/direction particularly one in the nature of Writ of Certiorari quashing the orders dated 04-04-2002 by the second respondent levying interest under Section 220(2) of Income Tax Act, 1961 and the order dated 30-08-2002 by the first respondent rejecting the waiver petition made under Section 220(2A) of the Income Tax Act, 1961 and consequently issue a writ of Mandamus directing both te respondents to waive the interest levied under Section 220(2) of the Income Tax Act, 1961 for the assessment year 1996-97.

Counsel for the Petitioner: MR.B.P.MOHAN

Counsel for the Respondents: MR.S.R.ASHOK (SC FOR INCOME TAX)

The Court at the stage of admission made the following ORDER:

(per the Hon'ble Sri Justice M.H.S.Ansari,)

The petitioner-assessee has questioned the order of the Commissioner of Income Tax (Central), Hyderabad, passed under Section 220(2A) of the Income Tax Act (for short 'the Act') rejecting the waiver petition filed by the petitioner.

Interest is payable by the assessee, if the tax, as demanded, is not paid within the specified period. Waiver of interest for the assessment year 1996-97 amounting to Rs.4,25,69,676/- charged under Section 220(2) of the Act for the period from December 1998 to March 2002 was paid by the assessee under the said Sub-section.

Under Sub-section (2-A) of Section 220 of the Act, power has been conferred upon the Chief Commissioner or Commissioner to reduce or waive the amount of interest paid or payable by an assessee under Sub- Section (2) of the Act, if the Commissioner is satisfied that:

i. payment of such amount [has caused or] would cause genuine hardship to the assessee;

ii. default in the payment of the amount on which interest [has been paid or] was payable under the said sub-section was due to circumstances beyond the control of the assessee; and

iii. the assessee has co-operated in any inquiry relating to the assessment or any proceeding for the recovery of any amount due from him.

A bare perusal of the above provisions contained under Sub-section (2-A) of Section 200 of the Act would show that the discretion conferred upon the Commissioner to waive or reduce interest is circumscribed by the three conditions extracted supra.

In exercise of its power of judicial review under Article 226 of the Constitution of India, this Court does not act as a Court of appeal. It is to see whether the authority conferred with the power has exercised the same in accordance with law, or that the decision is founded on irrelevant considerations eschewing from consideration relevant material on record or the same is perverse or in violation of principles of natural justice.

It is the contention of Mr.Janardhan Raju, learned counsel for the assessee that the order impugned suffers from non- application of mind and that the contentions raised by the petitioner and the submissions made in his application for waiver of interest have not been considered by the learned Commissioner, and therefore, there is a failure to exercise the jurisdiction vested in the Commissioner. In other words, it is contended that although the petitioner satisfied the conditions (i) to (iii), by the impugned order, the Commissioner has rejected the application on irrelevant considerations.

Mr.S.R.Ashok, learned Senior Standing Counsel for the Revenue, on the other hand, submitted that the order impugned is a reasoned one and does not suffer from any legal infirmity. The petitioner, having failed to satisfy the conditions prescribed under Sub-section (2-A) of Section 220 of the Act, is not entitled to the relief as prayed for.

The impugned order has been read before us by the learned counsel for the respective parties. We find that it is a reasoned order and does not suffer from any legal infirmity. From the material on record and more particularly, the averments made by the petitioners in the two representations made before the Commissioner, we are not satisfied that the petitioner has fulfilled the conditions (i) and (ii) to warrant the exercise of discretion conferred under Sub-section (2-A) of Section 220 of the Act to waive the amount of interest payable. We find that sufficient reasons have given in support of the conclusions arrived at by the learned Commissioner in his order under appeal

We, therefore, find no ground to interfere with the impugned order and the writ petition is liable to be dismissed.

Accordingly, the writ petition is dismissed. No order as to costs.

M.H.S.ANSARI,J

Dt:16-12-2004

T.CH.SURYA RAO,J

kdl

To

1. The Commissioner of Income Tax (Central), Hyderabad.
2. The Deputy Commissioner of Income Tax , Central Circle I, Basheer Bagh, Hyderabad.

3 Two C.D. Copies.